

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In Re the License Application of the
St. Paul Firearms Co., 634 Snelling
Avenue North, St. Paul, Minnesota

DISCOVERY ORDER

By a motion filed October 30, 1996, the Hamline-Midway Neighborhood Stability Coalition ("the Coalition") seeks an order allowing it to conduct discovery in this proceeding. The Applicant, St. Paul Firearms Co. ("SPFC" or "the Applicant") filed objections to the discovery motion on November 1, 1996. The City of St. Paul also filed its response on November 1, 1996.

The Coalition is represented in this matter by Thomas Darling, Esq., Gray, Plant, Mooty, Mooty & Bennett, P.A., 3400 City Center, 33 South Sixth Street, Minneapolis, Minnesota 55402-3706 and by Richard D. Snyder, Esq., Fredrikson & Byron, P.A., 1100 International Centre, 900 Second Avenue South, Minneapolis, Minnesota 55402. The Applicant, SPFC, is represented by David Feinwachs, Esq., 2227 University Avenue, St. Paul, Minnesota 55114. The City of St. Paul is represented by Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102.

Based upon the filings by the parties and for the reasons set out in the following Memorandum,

IT IS HEREBY ORDERED that

1. Each party shall file a summary of the expected testimony for each witness with its witness list.
2. The motion for leave to take discovery is otherwise denied.

Dated this 4th day of November 1996.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Intervenor Coalition seeks an order authorizing interrogatories, requests for production of documents, requests for admissions, and two depositions. The discovery request is opposed both by the Applicant and the City except that the Applicant has responded to Interrogatory No. 2, Document Request No. 3, Request for Admission No. 4 and Request for Admission No. 5. The City has proposed in lieu of a deposition of its licensing director that its witness list include a summary of the proposed testimony of the witnesses.

The Coalition argues that the discovery is necessary to ensure that it has a fair chance to present its case, as well as to ensure that the hearing will proceed as efficiently as possible. In addition to the written discovery, it seeks to depose the Applicant and the City of St. Paul employee in charge of licensing. However, as the Coalition acknowledges, this matter is not a contested case proceeding under the Minnesota Administrative Procedure Act. Therefore, the discovery provisions of the Rules of the Office of Administrative Hearings do not apply. The general rule in Minnesota is that absent statutory or rule authorization for discovery, there is no due process right to even limited discovery in an administrative proceeding. Waller v. Powers Department Store, 343 N.W.2d 655, 657-8 (Minn. 1984). Despite the holding in Waller, it might be argued that discovery would be appropriate if it could be clearly demonstrated that its absence would deprive a party of a fair hearing or prevent the adequate presentation of a party's case. Arguably, the more complex a case, the more some type of discovery may be needed.

This is not such a case. The Applicant points out that the Coalition is already in possession of the discovery ordered by Judge Poritsky in an Order dated June 19, 1996. As a result, the Intervenor has in its possession Applicant's journals, accounts, profit and loss statements and tax returns. Additionally, the Coalition has inspected, mapped and videotaped the Applicant's business premises. The Applicant expresses a concern about providing security information about its business premises in a public forum. The City points out that the Intervenor has filed a request pursuant to the Minnesota Government Data Practices Act to inspect and copy all documents relating to the application for this license and that information is being provided to it. It also argues

that there is little that Robert Kessler, the Licensing Director, can provide by way of information.

Having reviewed the proposed interrogatories, requests for production of documents, request for admissions, and request for depositions, it cannot be concluded that the lack of this discovery would prevent a fair hearing. To the contrary, it appears that substantial information has already been provided. The Applicant has voluntarily provided some of the discovery requested. Both the Applicant and the City have agreed to provide a summary of the testimony of its witnesses when the witness lists are filed on November 13, 1996. Accordingly, given the absence of any authority for discovery in this matter, the motion is denied.

G.A.B.